[redacted]
56

MONTANA LEGISLATIVE HISTORY

Chapter 566 19 99

Bill H 366 S _____ Original bill & history ✓ C
including exhibits

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 1/27	✓ C	Hearing Date(s) 3/12	✓ C
_____	____ C	_____	____ C
_____	____ C	_____	____ C
_____	____ C	_____	____ C
Date Out _____	____ C		

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

3/16	Committee Executive Action--Bill Concurred	5	0
3/16	Committee Report--Bill Concurred		
3/17	2nd Reading Concurred	49	0
3/18	3rd Reading Concurred	48	0
	Returned to House		
3/19	Sent to Enrolling		
3/19	Returned from Enrolling		
3/20	Signed by Speaker		
3/23	Signed by President		
3/23	Transmitted to Governor		
3/24	Signed by Governor		
3/25	Chapter Number Assigned		
	Chapter Number 164		
	Effective Date: 3/24/1999 - All Sections		

HB 363 Introduced by Wyatt *LC0931 Drafter: B. Campbell*

Authorize Park and Forestry Maintenance Districts

1/23	Introduced and 1st Reading		
1/23	Referred to Local Government		
2/09	Hearing		
2/18	Committee Executive Action--Bill Passed as Amended	11	4
2/18	Committee Report--Bill Passed as Amended		
2/19	2nd Reading Pass Motion Failed	47	52

HB 364 Introduced by Lindeen, et al. *LC0896 Drafter: Fox*

Require That an Insurer Provide Travel Expenses Whenever Travel Is Necessitated by Authorized Medical or Rehabilitative Treatment;...

1/23	Introduced and 1st Reading
1/23	Referred to Business and Labor
1/27	Hearing
3/25	Tabled in Committee
3/31	Missed Deadline for Revenue Bill Transmittal

HB 365 Introduced and 1st Reading by Cobb *LC0555 Drafter: Heiman*

Authorize a County to Enact a Local Option Cigarette Excise Tax to Fund Health Care Programs;...

1/23	Introduced
1/23	Referred to Taxation
1/29	Hearing
2/02	Tabled in Committee
3/31	Missed Deadline for Revenue Bill Transmittal

HB 366 Introduced and 1st Reading by Kasten, et al. *LC1000 Drafter: Fox*

Revise the Laws Governing Child Protective Services;...

1/23	Introduced		
1/23	Referred to Judiciary		
1/27	Hearing		
2/18	Committee Executive Action--Bill Passed as Amended	16	4
2/18	Committee Report--Bill Passed as Amended		

2/20	2nd Reading Passed	89	9
2/22	3rd Reading Passed	86	12
	Transmitted to Senate		
2/23	Referred to Judiciary		
3/12	Hearing		
3/18	Committee Executive Action--Bill Concurred as Amended	9	0
3/18	Committee Report--Bill Concurred as Amended		
3/22	2nd Reading Concurred	49	0
3/23	3rd Reading Concurred	48	0
	Returned to House with Amendments		
4/13	2nd Reading Senate Amendments Concurred	96	4
4/14	3rd Reading Passed as Amended by Senate	87	11
4/14	Sent to Enrolling		
4/15	Returned from Enrolling		
4/16	Signed by Speaker		
4/16	Signed by President		
4/16	Transmitted to Governor		
4/16	Returned to House with Governor's Proposed Amendments		
4/20	2nd Reading Governor's Proposed Amendments Concurred	89	7
4/21	3rd Reading Governor's Proposed Amendments Concurred	89	11
4/21	Transmitted to Senate for Consideration of Governor's Proposed Amendments		
4/20	2nd Reading Governor's Proposed Amendments Concurred	50	0
4/21	3rd Reading Governor's Proposed Amendments Concurred	50	0
4/21	Returned to House Concurred in Governor's Proposed Amendments		
4/21	Sent to Enrolling		
4/23	Returned from Enrolling		
4/28	Signed by President		
4/29	Signed by Speaker		
4/30	Transmitted to Governor		
5/06	Signed by Governor		
5/07	Chapter Number Assigned		
	Chapter Number 566		
	Effective Date: 10/01/1999 - All Sections		

HB 367 Introduced and 1st Reading by Barnhart *LC0930 Drafter: Fox*

Revise Laws Relating to Food Establishments;...

12/03	Fiscal Note Needed
1/23	Introduced
1/23	Referred to Business and Labor
1/23	Fiscal Note Requested
1/28	Hearing
1/28	Fiscal Note Received
1/29	Fiscal Note Printed
2/05	Tabled in Committee
3/01	Missed Deadline for General Bill Transmittal

HB 368 Introduced and 1st Reading by Barnhart *LC1556 Drafter: Fox*

Establish a Risk-based License Fee for Medium-risk Food Manufacturing Establishments;...

House BILL NO. 366

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING CHILD PROTECTIVE SERVICES; IMPLEMENTING THE FEDERAL ADOPTION AND SAFE FAMILIES ACT; CLARIFYING WHEN EFFORTS MUST BE MADE TO REUNIFY CHILDREN WITH ABUSIVE PARENTS; CLARIFYING WHEN PARENTAL RIGHTS MAY BE JUDICIALLY TERMINATED; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-202, 41-3-205, 41-3-303, 41-3-401, 41-3-403, 41-3-404, 41-3-406, 41-3-412, 41-3-607, 41-3-609, 41-3-1103, AND 42-2-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-101, MCA, is amended to read:

"**41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

(a) ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible;

(d) preserve the unity and welfare of the family whenever possible; ~~and~~

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect; and

(f) recognize that a child is entitled to assert the child's constitutional rights.

(2) It is the policy of this state to:

(a) protect, whenever possible, family unity;

(b) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;

(c) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority and protective services and to require that a judge may not issue an order granting the petition,

except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted; and

(d) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(3) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(4) In implementing the policy of this section, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility. Prior to approving a home, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children."

Section 2. Section 41-3-102, MCA, is amended to read:

"**41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed.

~~(1)~~(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

~~(2)~~(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

~~(3)~~(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

~~(4)~~(5) "Best interests of the child" means the physical, mental, and ~~emotional~~ psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

~~(5)~~(6) "Child" or "youth" means any person under 18 years of age.

~~(6)~~(7) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare; or

(ii) threatened harm to a child's health or welfare.

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

~~(7)~~(8) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(8) "Emotional abuse" means injury to the emotional well-being or intellectual or psychological capacity of a child, as evidenced by an identifiable and substantial impairment of a child's physical, mental, or emotional ability to function.~~

(9) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or ~~emotional abuse~~ psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child ~~by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or willfully surrenders physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or~~

~~(g) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parent or other person have failed~~.

(10) "Limited emancipation" means a status conferred on a youth by a court ~~after a dispositional hearing~~ in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(11) "Parent" means a biological or adoptive parent or stepparent.

(12) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(13) "Physical abuse" means substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, intentional burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death if the injury or death is not accidental.

(14) "Psychological abuse or neglect" means severe maltreatment through an act or omission that is injurious to the child's emotional, intellectual, or psychological capacity to function, including an act of violence against another person residing in the child's home.

~~(14)~~(15) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

~~(15)~~(16) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

~~(16)~~(17) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5~~, part 5~~.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

~~(17)~~(18) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

~~(18)~~(19) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained or is receiving education or training in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

~~(19)~~(20) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

~~(20)~~(21) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

~~(21)~~(22) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(21)~~ (22), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

~~(22)~~(23) "Youth in need of care" means a youth who is abused or neglected."

Section 3. Section 41-3-202, MCA, is amended to read:

"**41-3-202. Action on reporting.** (1) Upon receipt of a report~~, as required by 41-3-201,~~ that a child is or has been abused or neglected, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child~~, which~~. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-411.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of

independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the school attended by the child involved may participate in any interview of the child.

(4) If the child's interview is videotaped, an unedited videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide protective services to the child pursuant to 41-3-301 and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsection (5)(b), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is

made to the department through its local office."

Section 4. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department ~~of public health and human services~~ and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may ~~also~~ be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group conference for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department, if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (4) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(6) This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 5. Section 41-3-303, MCA, is amended to read:

"**41-3-303. Guardian ad litem.** (1) In every judicial proceeding, the court shall appoint for any child alleged to be abused or neglected a guardian ad litem. The department or any of its staff may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary, the guardian ad litem may serve at public expense.

(2) The guardian ad litem is charged with the representation of the child's best interests. The guardian ad litem has the following general duties:

(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare; ~~and~~

(f) to perform other duties as directed by the court; and

(g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise assert the child's rights.

(3) Information contained in a report filed by the guardian ad litem or testimony regarding a report filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion as to the best interests of the child."

Section 6. Section 41-3-401, MCA, is amended to read:

"**41-3-401. Abuse and neglect petitions.** (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all petitions ~~alleging abuse or neglect~~ under this chapter. ~~The county attorney, the attorney general, or an attorney hired by the department with the written consent of the county attorney or the attorney general may require all state, county, and municipal agencies, including law enforcement agencies, to conduct the investigations and furnish reports that may be necessary.~~

(2) Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the

court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 working days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(8) Except when the proceeding is instituted or commenced at the request of the department ~~of public health and human services~~, a citation must be issued and served upon a representative of the department before the court hearing.

(9) The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services, as provided in 41-3-402;

(b) temporary legal custody, as provided in 41-3-406;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or

(d) any combination of the provisions of subsections (10)(a) through (10)(c) or any other relief that may be required for the best interests of the child.

(11) A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection (10) of this section.

~~(11)~~(12) The petition may be modified for different relief at any time within the discretion of the court.

~~(12)~~(13) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 7. Section 41-3-403, MCA, is amended to read:

"**41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court, after consideration of the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court, may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served ~~by a peace officer or a representative of the department~~ pursuant to the Montana Rules of Civil Procedure on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. The show cause hearing must be conducted within ~~20~~ 10 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. At the show cause hearing, the court shall provide an opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide relevant testimony. The court may consider all relevant evidence in accordance with the rules of

civil procedure as modified by this part, but may in its discretion limit testimony and evidence to only that which is relevant to the issues of removal from the home and the child's need for continued protection. The court may amend the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.

(d) If the child is not returned home after the show cause hearing, the person served may request that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(e) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the youth with the department until further order.

(2) ~~In~~ At the conclusion of a show cause hearing, in an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to ~~rehabilitate the family to~~ prevent the child's removal from the home or to make it possible to safely return the child to the child's home. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. Reasonable efforts to provide preservation or reunification services are not required if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated, and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do

so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; and

(ii) recorded on the child's birth certificate as the child's father.

(4) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home.

~~(3)~~(6) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having physical or legal custody;

(c) requirement that the youth, parents, guardians, or person having physical or legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having physical or legal custody furnish ~~services~~ information that the court may designate;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-411; or

(g) other temporary disposition that may be required in the best interests of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(4)~~(7) An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing and must be limited to one extension of 90 days. Before the expiration of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county shall file a petition for one of the following:

(a) limited emancipation;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or

(d) dismissal.

~~(5)~~(8) Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection ~~(4)~~ (7).

~~(6)~~(9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 8. Section 41-3-404, MCA, is amended to read:

"**41-3-404. Adjudicatory hearing -- temporary disposition.** (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine by a preponderance of the evidence whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in

determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse or neglect, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803 and the mediator privilege granted by 26-1-811, apply.

(4) (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(b) If the youth is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403~~(3)~~(6)."

Section 9. Section 41-3-406, MCA, is amended to read:

"**41-3-406. Dispositional hearing -- temporary legal custody.** (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court, and who is found by the court to be qualified to receive and care for the youth;

(d) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing

is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

(2) To grant temporary legal custody, the court shall make a finding that:

(a) ~~returning the child to the child's parent or guardian~~ dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or ~~emotional~~ psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(3) ~~In making a finding regarding the risk of harm to the child or regarding detriment to the child, failure of the child's parent or guardian to participate in, to comply with, in whole or in part, or to meet the goals of a court-ordered treatment plan constitutes prima facie evidence that return of the child to the parent or guardian would be detrimental to the child's physical or emotional well-being.~~ If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) If the court finds that reasonable efforts are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(4)~~(5) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing

that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and permanent legal custody with the right of adoption pursuant to 41-3-607; ~~or~~

(c) long-term custody pursuant to 41-3-412; or

(d) dismissal.

~~(5)~~(6) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection ~~(4)~~ (5).

~~(6)~~(7) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.

~~(7)~~(8) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 10. Section 41-3-412, MCA, is amended to read:

"**41-3-412. Permanency plan hearing.** (1) A permanency plan hearing must be held by the court no later than 12 months after the initial ~~order is issued~~ court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first, unless the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian. The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must contain the:

(a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment plan;

(b) extent to which the parent or guardian cooperated and used the services provided;

(c) status of the child, including the child's mental, physical, and ~~emotional~~ psychological health; and

(d) plan for permanency for the child, including specific times for achieving the plan.

(3) At least 3 days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) If the court finds that the permanency plan is in the best interests of the child, the court shall: ~~(a)~~ order the department to take whatever steps are necessary to effectuate the terms of the plan, including returning the child safely to the child's home, and shall order the county attorney, the attorney general, or an attorney hired by the county to file a petition to implement the plan with the court within 30 days after the present hearing unless a petition has already been filed. ~~for one of the following:~~

~~(i) termination of parental rights;~~

~~(ii) temporary legal custody, not to exceed 6 months; or~~

~~(iii) dismissal; and~~

~~(b) in~~(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the provisions in subsection (6) and that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(5)~~(6) If the permanency plan hearing results in ~~an order for a 6-month extension of temporary legal custody, upon the expiration of the temporary legal custody order and the filing of a petition by the department and if the court finds~~ a finding that reunification of the child with the child's parent or guardian is not in the best interests of the child, ~~the court shall order~~ any subsequent petition filed must be one of the following:

(a) termination of parental rights if the applicable requirements to terminate parental rights have been met; ~~or~~

(b) long-term custody of a child if the evidence demonstrates by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(ii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iii) the child's parent is incarcerated and circumstances, including placement of the child and

continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent;

(iv) the child is in a group of siblings, at least one of whom meets the requirements of subsections (6)(b)(v)(A) through (6)(b)(v)(D), and the best interests of the child will be met by continued placement in the sibling group in long-term foster care; or

(v) the child is at least 12 years of age and meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

~~(iii)~~(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

~~(iii) the child has reached 12 years of age;~~

~~(iv)~~(C) termination of parental rights to the child is not in the child's best interests; and

~~(v)~~(D) the child has been in a placement in which the foster parent has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

~~(6)~~(7) The court may terminate long-term custody upon petition of the birth parents~~, those to whom legal custody has been transferred,~~ or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

NEW SECTION. **Section 11. Review hearing.** Within 12 months of a finding that reunification is not in the best interests of the child, the court shall make additional findings regarding the department's reasonable efforts to make and finalize a permanent placement for the child.

NEW SECTION. **Section 12. When petition to terminate parental rights required.** (1) If a child has been in foster care under the custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-403, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-403(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

Section 13. Section 41-3-607, MCA, is amended to read:

"**41-3-607. Petition for termination -- separate hearing -- right to counsel -- no jury trial.** (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination pursuant to 41-3-609. If termination of a parent-child legal relationship is ordered, the court may transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(a) the department;

(b) a licensed child-placing agency; or

(c) another individual who has been approved by the department and has received consent for

the transfer of custody from the department or agency that has custody of the child.

(2) ~~After~~ At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed ~~in accordance with 41-3-401~~ for an indigent party.

(3) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 14. Section 41-3-609, MCA, is amended to read:

"**41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents ~~as set forth in 41-3-102~~;

(c) ~~the identity of the parent is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parent have failed;~~

~~(d)~~ the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected the child to any of the circumstances listed in 41-3-403(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-403(3)(a) through (3)(c); or

~~(e)~~(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time~~; or~~

~~(f) the parent has substantially failed to successfully complete or meet the goals of a treatment plan approved by the court and the child has been in an out-of-home placement for a cumulative total period of 1 year or longer~~.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) ~~a single incident of life-threatening or gravely disabling injury to or disfigurement of a child caused by the parent;~~

~~(d)~~ excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

~~(c)~~(d) present judicially ordered long-term confinement of the parent;

~~(f) the injury or death of a child because of proven abuse or neglect; and~~

~~(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent~~.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. ~~The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.~~

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

~~(a)~~(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent;

~~(b)~~(c) the parent is or will be incarcerated for more than 1 year and ~~a treatment plan is not~~

~~practical considering the incarceration~~ reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

~~(c)~~(d) the death or serious bodily injury, as defined in 45-2-101(64), of a child caused by abuse or neglect by the parent has occurred."

Section 15. Section 41-3-1103, MCA, is amended to read:

"**41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, child-care agencies, and youth assessment centers for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, youth group homes, child-care agencies, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

(4) The department may negotiate and make payments for approved guardianships of children in the department's legal custody who meet the eligibility criteria established by the department."

Section 16. Section 42-2-608, MCA, is amended to read:

"**42-2-608. Finding of unfitness.** (1) The court may terminate parental rights for purposes of making a child available for adoption on the grounds of unfitness if:

(a) the court makes a determination that the parent has been judicially deprived of custody of the child on account of abuse or neglect toward the child;

(b) the parent has in the state of Montana or in any other jurisdiction of the United States willfully abandoned the child, as defined in 41-3-102~~(7)(e)~~, in Montana or in any other jurisdiction of the United States;

(c) it is proven, to the satisfaction of the court, that the parent, if able, has not contributed to the support of the child for an aggregate period of 1 year before the filing of a petition for adoption;

(d) it is proven, to the satisfaction of the court, that the parent is in violation of a court order to support either the child that is the subject of the adoption proceedings or other children with the same birth mother;

(e) the parent has been found guilty by a court of competent jurisdiction of:

(i) aggravated assault on the adoptee, as provided in 45-5-202;

(ii) sexual assault on a child, as provided in 45-5-502;

(iii) sexual intercourse without consent, as provided in 45-5-503, if the victim was a child;

(iv) incest, as provided in 45-5-507, if the victim was a child;

(v) homicide of a child, as provided in 45-5-102 or 45-5-103;

(vi) sexual abuse of a child, as provided in 45-5-625; or

(vii) ritual abuse of a minor, as provided in 45-5-627;

(f) the child has been maintained by a public or private children's institution, a charitable agency, a licensed child-placing agency, or the department for a period of 1 year without the parent contributing to the support of the child during that period, if able;

(g) a finding is made for a parent who is given proper notice of hearing:

(i) that the parent has been convicted of a crime of violence or of violating a restraining or protective order; and

(ii) the facts of the crime or violation and the parent's behavior indicate that the parent is unfit to maintain a relationship of parent and child with the child;

(h) a finding is made for a parent who is given proper notice of hearing and is a respondent to the petition to terminate parental rights and:

(i) by a preponderance of the evidence, it is found that termination is in the best interests of the child; and

(ii) upon clear and convincing evidence, it is found that one of the following grounds exists:

(A) if the child is not in the legal and physical custody of the other parent, that the respondent is not able or willing to promptly assume legal and physical custody of the child and to pay for the child's support in accordance with the respondent's financial means;

(B) if the child is in the legal and physical custody of the other parent and a stepparent who is the prospective adoptive parent, that the respondent is not able or willing to promptly establish and maintain contact with the child and to pay for the child's support in accordance with the respondent's financial means;

(C) placing the child in the respondent's legal and physical custody would pose a risk of substantial harm to the physical or psychological well-being of the child because the circumstances of the child's conception, the respondent's behavior during the mother's pregnancy or since the child's birth, or the respondent's behavior with respect to other children indicates that the respondent is unfit to maintain a relationship of parent and child with the child; or

(D) failure to terminate the relationship of parent and child would be detrimental to the child.

(2) In making a determination under subsection (1)(h)(ii)(D), the court shall consider any relevant factor, including the respondent's efforts to obtain or maintain legal and physical custody of the child, the

role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability to care for the child, the age of the child, the quality of any previous relationship between the respondent and the child and between the respondent and any other children, the duration and suitability of the child's present custodial environment, and the effect of a change of physical custody on the child."

NEW SECTION. **Section 17. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 18. Codification instruction.** (1) [Section 11] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 11].

(2) [Section 12] is intended to be codified as an integral part of Title 41, chapter 3, part 6, and the provisions of Title 41, chapter 3, part 6, apply to [section 12].

NEW SECTION. **Section 19. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on January 27, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s): SB20,HB 366, HB 361,, 1/27
Date Posted: 1/25/1999

Executive Action: HB 278, HB 279-Tabled HB 106-Do Pass as Amended, HB 308-Do Pass

HEARING ON SB 20

Sponsor:

Sen. Shea presented SB 20.
{Tape : 1; Side : A; Approx. Time Counter : 0 - 57}

Proponents:

Craig Thomas, Board of Pardons and Paroles
{Tape : 1; Side : A; Approx. Time Counter : 57 - 171}
Mary Jo Fox, Governor's Office
{Tape : 1; Side : A; Approx. Time Counter : 171 - 251}

Opponents:
None
Informational Testimony:
None

Questions from Committee Members and Responses:
{Tape : 1; Side : A; Approx. Time Counter : 251 - 550}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 550}
{Tape : 2; Side : A; Approx. Time Counter : 0 - 119}

Closing by Sponsor:

Sen. Shea made closing remarks.
{Tape : 2; Side : A; Approx. Time Counter : 119 - 150}

HEARING ON HB 366

Sponsor:

Rep. Kaston presented HB 366.
{Tape : 2; Side : A; Approx. Time Counter : 150 - 168}

Proponents:

Ann Gilkey, Court Assessment Program/ Montana Supreme Court
{Tape : 2; Side : A; Approx. Time Counter : 168 - 317}

EXHIBIT(1)
EXHIBIT(2)
EXHIBIT(3)

Chuck Hunter, Montana Dept. of Public Health and Human Services
{Tape : 2; Side : A; Approx. Time Counter : 317 - 383}
Laurie Koutnik, Christian Coalition
{Tape : 2; Side : A; Approx. Time Counter : 383 - 427}
Sharon Hoff, Montana Catholic Conference
{Tape : 2; Side : A; Approx. Time Counter : 427 - 447}
Colleen Murphy, National Association of Social Workers
{Tape : 2; Side : A; Approx. Time Counter : 447 - 550}
Karen Sedlock, Court Assessment Advisory Council
{Tape : 2; Side : B; Approx. Time Counter : 0 - 10}
Sandy Butler, Montana Nurses Association
{Tape : 2; Side : B; Approx. Time Counter : 10 - 23}
Bob Anderson, Montana Sheriffs and Peace Officers Association
{Tape : 2; Side : B; Approx. Time Counter : 23 - 28}
Frank Fisher, Casey Family Program
{Tape : 2; Side : B; Approx. Time Counter : 28 - 51}

Opponents:
None

Informational Testimony:
None
Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 51 - 550}
{Tape : 3; Side : A; Approx. Time Counter : 0 - 97}

Closing by Sponsor:

Rep. Kaston made closing remarks.

EXHIBIT(4)

{Tape : 3; Side : A; Approx. Time Counter : 97 - 107}

HEARING ON HB 361

Sponsor:

Rep. Shockley presented HB 361.
{Tape : 3; Side : A; Approx. Time Counter : 107 - 192}

EXHIBIT 1
DATE 1/27/99
HB 366

Montana Council for Families
Information on
House Bill 366
Prepared by
Sara Lipscomb, Director
January 25, 199

This bill will bring Montana into compliance with the requirements of Adoptive and Safe Families Act (Title IVB of the Social Security Act). This federal act is designed to make the safety of the child the paramount concern and reduces the time a child may spend in foster care.

Once a child is found to have been abused or neglected, the child has already suffered. All children deserve to have their health and safety strongly considered in any placement decision. Reasonable efforts to reunify a family can now be balanced with the right of the child to be safe. Montana's children are not immune from the devastating effects of child abuse and neglect. In Great Falls, one year old Kevin Gefrob, was killed when his caregiver grabbed the boy and slammed him down, shattering the baby's skull. Recently, in Helena, a caregiver was convicted of shaking a baby to death. Safety of Montana's children needs to be a paramount concern.

Children deserve to have a sense of permanence in their own time. A child's sense of time is different from an adults. For a five-year-old child, one year is twenty percent of their life. For a fifty-year-old adult, one year is two percent of their life. Children deserve to have a safe, stable family in their own time. Imagine spending twenty percent (or more) of your life in limbo, not knowing if this family was the place you were going to stay. Fragile children, children who have suffered abuse and neglect, need a sense of belonging. These children, perhaps more than any other children, need a home.

Montana has a unique opportunity in implementation of this legislation. Since we will be one of the last states to codify this federal requirement, we can draw on the experiences of other states, we can review existing programs to decide how to best protect abused and neglected children.

EXHIBIT 2
DATE 1/27/99
HB 366

Testimony in support of HB 366
Submitted by Ann Gilkey
Supreme Court, Court Assessment Program

Among other provisions, HB 366 implements the federal Adoption and Safe Families Act of 1997 (ASFA). ASFA was passed by Congress with strong bipartisan support in recognition of a need to correct some problems with the current state and federal child protective services statutes, policies and procedures. Congress was alarmed at the number of abused and neglected children who were growing up in foster care. They were also concerned that parents were, in some cases, being given too many chances to correct serious problems leading to the removal of their children. At some point, continuing efforts to reunify a family becomes unreasonable. In conjunction with this Congress wanted laws related to child protective services to focus on the child's safety and placement in a safe, permanent home as quickly as possible. HB 366's incorporation of ASFA imposes stricter requirements on all players, including: the judges, who must make specific findings at various stages of the proceedings and hold hearings within specific time frames; the agency, which must document and convince the court that reasonable efforts have been made to prevent the removal of the child or reunify the child with the family; and the parents, who must act quickly to resolve the serious problems resulting in removal of their child, or risk termination of their parental rights.

To address the concern of children growing up in foster care, the Act allows states to expedite termination of parental rights if the parents have committed an act so outrageous that efforts to prevent removal of the child would be unreasonable. Some of the criteria in HB 366 which could arise to expedited proceedings include a judicial finding that the child has been abandoned or tortured; the parent has killed or committed felony assault of another child; the parental rights of the parent to another child has been involuntarily terminated; or an unknown father has no substantial relationship with this child for an extended period of time.

HB 366 incorporates Congress's interest in judges having good information to assist them in making decisions about kids' futures. The bill includes the Acts' provision that foster parents be given notice of all hearings and reviews and be allowed to attend and be heard.

Some of the amendments contained in HB 366 that are not requirements of ASFA, but are important and should be noted, include the following:

- Lessens the time from 20 days to 10 days to hold a show cause hearing after an emergency removal order is issued;
- Tightens language regarding extensions of TLC (6 months and ONE extension, not to exceed 6 months); and
- Clarifies that children have constitutional rights which they are entitled to assert and expands the GAL duties to include filing motions on the child's behalf to represent their interests to the court.

I strongly urge your support of HB 366.

EXHIBIT 3
DATE 1/27/09
HB 366

Synopsis of provisions of HB 366

Section 1, page 1, line 23: Clarifies that children have rights under the Montana Constitution that must be protected.

Section 2, page 2, lines 19-26 and page 4, lines 11-17: Moves and consolidates term "abandoned" child into its own definition. There is no new substantive language.

Page 3, lines 26-28 and page 4, lines 28-30: Deletes term "emotional abuse" and changes it to "psychological abuse or neglect." This is a national trend in recognition that emotional abuse is a component of the broader phenomenon of psychological abuse or neglect. Such abuse/neglect is present in many more cases than can be substantiated because of the extremely narrow wording in the present definition. New term/definition will enable state to better protect children from what is probably the most wide spread and damaging of all abuse/neglect.

Page 4, line 18-19: Will allow children not already in the child protective services (CPS) system to ask for limited emancipation if they meet the criteria in 41-3-406. So kids who are otherwise doing well, but need to be emancipated from their parents (and meet the criteria), may ask the court for limited emancipation.

Page 5, lines 8-9: "Sexual abuse" in civil child protective services cases, is defined as the variety of sexual crimes found in Title 45's criminal codes. Two obvious sex crimes were inadvertently omitted from this definition: sexual abuse and ritual abuse. It is confusing that "sexual abuse" in Title 41 differs from "sexual abuse" in Title 45. The term in Title 45 is more narrow, and needs to be included in the Title 41 definition to capture all types of "sex crimes" against children.

Section 3, page 6, line 19: Reference to 41-3-201 is deleted because it may mean that only those reports of child abuse/neglect received from mandated reporters must be investigated. This amendment clarifies that ALL legitimate reports of child abuse/neglect will be investigated. Amendment on line 22 is grammatical.

Section 4, page 8, lines 13-16: The term "case records" of child protective services cases has caused some confusion. This amendment clarifies what is meant by "records" and evens out the playing field for parents who were sometimes denied access to some records related to their case.

Section 5, page 11, lines 16-17: Allows (attorney) guardian ad litem for a child to file motions in court on behalf of the child.

Page 11, lines 18-20: This amendment clarifies that reports of the guardian ad litem are to be allowed into evidence for the purpose of forming the basis of the GALs opinion and recommendations regarding the child's best interest, but the court is not to rely on the information contained in the reports as basis for legal findings without more direct, admissible evidence. Reports submitted to the court from the child's guardian ad litem are important for assisting the court in determining the child's best interest.

Section 6, page 11, lines 24-28: This amendment deletes confusing language and unnecessary verbiage about responsibility for conducting investigations and filing petitions.

Page 12, lines 15-19: This is a requirement of the federal Adoption and Safe Families Act (ASFA). Among other things, ASFA addresses the concern that courts and review boards may not be getting all relevant information about children in foster care i.e. information from their care givers. This makes it a requirement that foster/preadoptive parents be notified of hearings and reviews and gives them the right to be heard.

Page 13, lines 6-8: ASFA allows states to makes provisions for expedited termination of parental rights and permanent placement of a child when the parent has committed an act so heinous that efforts to reunify the family would be unreasonable. (This language is in Section 7) This amendment allows the county attorney to ask for a determination from the court that reunification services need not be provided.

Section 7, page 13, lines 19-20: Clarifies that legal documents must be served on the parties pursuant to the Montana Rules of Civil Procedure, just like in any other action.

Page 13, line 26: Lessens the time for a show cause hearing from 20 days to 10 days after a child has been removed from his home due to an emergency.

Pages 14, line 12: Clarifies the requirement that a hearing be held before the court makes a finding regarding whether reasonable effort to reunify the family may be made

Page 14, lines 14-16: Stresses that safety of the child is of paramount concern when considering returning the child home. (ASFA)

Page 14, line 17 through page 15, line 12: Codifies ASFA's recognition that some parental conduct is so egregious that reasonable efforts for reunification need not be made and delineates the circumstances under which a court may make a finding that reunification services need not be provided to the family.

Page 15, lines 13-16: Provides that if court makes a finding that reasonable efforts need not be made, a permanency hearing be held within 30 days of such a finding (ASFA requirement).

Page 15, lines 17-23: Contains the ASFA requirement which focuses on child safety and permanency. If reunification/preservation services have been provided to the parents, but such efforts begin to conflict with the permanency plan and best interests of the child, reasonable efforts must be made to place the child permanently. This subsection also clarifies that making efforts to reunify a child with the child's parents may be done simultaneously with an alternative permanent placement (concurrent) plan. (ASFA)

Page 16, line 2: Clarification of what is actually done -- parents don't furnish "services", they may furnish "information."

Section 8, page 17, line 10: Citation change.

Section 9, page 18, line 8: Clarifies that a child need not be in foster care to grant temporary legal custody to the state (although that is typically the case.)

Page 18, line 9: Makes language consistent with change in definitions .

Page 18, lines 11 and 13: Makes reference to the new ASFA allowance, contained in Section 7, for a finding that reasonable efforts to reunify the family are not required in some instances.

Page 18, lines 14-22: Language deleted is confusing and unnecessary. New language iterates the ASFA requirement that reasonable efforts must be made to achieve the child's permanency plan if it becomes inconsistent with the parents' lack of success with their treatment plan.

Page 18, lines 23-26: ASFA requirement that a permanency hearing be held within 30 days of a judicial finding that reasonable efforts to rehabilitate the family are not required.

Page 18, line 30: Limits an extension of temporary legal custody to a total of 6 months.

Page 19, line 4: Clarifies that long term custody may be requested following an order of temporary legal custody of a child.

Section 10, page 19, line 16-18: Includes the federal definition of when foster care is considered to begin with respect to mandated time frames for hearings and foster care payments.

Page 19, line 28: Makes language consistent with change in definition.

Page 19, line 30: Requires the department to specify to the court times that permanency plan goals will be met.

Page 20, line 4-10: Clarifies that the court may order a child be returned home following the permanency hearing if it is safe to do so, and deletes unnecessary, redundant language.

Page 20, lines 11 and 12: Gives the court discretion in issuing its order, as long as that discretion doesn't conflict with the limited options for permanency delineated in subsection (6).

Page 20, lines 16- page 21 line 11: Deletes language allowing for another 6 month extension of temporary legal custody before action is taken toward permanency for children and delineates the types of petitions/relief which may be asked for in a petition or granted by the court. "Long term custody" is expanded, but is more specifically defined so that it does not become an easy alternative to termination of parental rights and a legal dumping ground for children. The criteria and order for long term custody came from suggestions from the American Bar Association's Center on Children and the Law, and discussions with professionals working with the children and the statutes.

Page 21, lines 16-17: Clarifies that long-term custody is a type of foster care and custody remains with the state. We coordinated this bill with HB 180 which addresses guardianship arrangements for these children, which is a different legal animal than foster care.

New Section 11, page 21, lines 21-23: This section codifies a federally proposed ASFA regulation requiring a review hearing following court's finding that reunification is not going to occur. This will hold parties accountable to follow through on child's permanency plan.

New Section 12, pages 21, lines 25 through page 22, line 11: Codifies ASFA requirement to file petition to terminate parental rights (TPR) with narrowly delineated exceptions, if child has been in foster care for 15 of the past 22 months.

Page 22, lines 12-15: Requires agency report to be filed regarding reasons they haven't filed for TPR at next hearing or review.

Page 22, lines 16-20: Contains addition ASFA requirement for timing of filing petition for termination of parental rights (TPR) if certain findings are made i.e. abandonment or one of the "aggravated circumstances."

Section 13, pages 23, lines 2-4: Clarification of when an indigent parent is entitled to court appointed counsel.

Section 14, page 23, line 17 through page 24, line 27: Clarification and incorporation of previous amendments.

Page 24, line 30 through page 25, line 3: Addresses a Supreme Court decision that left uncertainty regarding how to deal with incarcerated parents and whether a treatment plan is needed prior to termination of their parental rights. This refocuses courts on the child's best interests, depending on the circumstances of the child and the parent's incarceration.

NOTE: This dovetails nicely with the exception to requiring termination of parental rights (allowing for a long term custody of a child) for the same reasons contained in 41-3-412 on page 20, line 30 through page 31, line 2. In other words, both the decision to terminate parental rights without a treatment plan and the ability to NOT file for TPR of incarcerated parents rests on the individual circumstances and best interests of the child.

Section 15, page 28, lines 9-10: Allows payment for judicially established guardianships similar to foster care payments. DPHHS has requested HB 180 delineating the eligibility criteria which we coordinated with this section if both or either bill passes.

Section 16, page 26, line 18: Contains a necessary citation amendment.

EXHIBIT 4
DATE 1/27/99
HB 366

TESTIMONY: HB 366

Shelly Meyer
2229 Briggs
Missoula, MT 596803
(406-251-5339)

My name is Shelly Meyer. I am a Public Health Nurse and Child Care Health Consultant residing in Missoula County. I request your support of HB 366. The intent of this bill is family reunification when that course is in the best interest of the child in child abuse or neglect cases.

Section 7, 41-3-403, (2) addresses orders for immediate protection. This provision specifies that the health and safety of the child are the first concern. It also defines the circumstances under which a parent's actions or failure to act would nullify a plan for reunification. This provides for circumstances where the health and safety of the child require immediate protection and reunification may not be possible.

Section 9, 41-3-406, (3) regarding temporary legal custody specifies that when reasonable efforts to prevent removal or attempts to return the child to the parent(s) fail, continuation of those efforts is inconsistent with a permanency plan for the child. This provision recognized that a permanent home (i.e. placement or custody) are in the best interest of the child by reason of stability and attachment and that at some point, reunification with the parent(s) must be evaluated in this light.

Section 10, 41-3-412, (6) under permanency plans specifies that when family reunification is not in the child's best interest, either termination or long term custody placement are indicated according to specified circumstances. Again, this provision recognizes that a stable home is in the best interests of the child and provides for either termination (leading to adoption) or long term custody (permanent foster care).

Please vote yes on HB 366. It provides for appropriate disposition in child abuse cases by identifying family reunification through all reasonable efforts and a permanent and stable home as serving the best interests of the child.

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY COMMITTEE

DATE 1/27/99

NAME	PRESENT	ABSENT	EXCUSED
Robert C. Clark, chair	✓		
Dan McGee, vice chair	✓		
Diana Wyatt, vice chair	✓		
Chris Ahner	✓		
Shiell Anderson	✓		
Paul Clark	✓		
Aubyn A. Curtiss	✓		
Bill Eggers	✓		
Tom Facey	✓		
Steven Gallus	✓		
Gail Gutsche	✓		
Joan Hurdle	✓		
Rick Jore	✓		
Sam Kitzenberg	✓		
Brad Molnar	✓		
Mark Noennig	✓		
Jim Shockley	✓		
Loren Soft	✓		
Carol Williams	✓		
Cindy Younkin	✓		

Commitment to Excellence...

- Take fast and make it faster.
- Take smart and make it brilliant.
- Believe that no matter how well you do something, you can always do it better.
- And chances are you will.

1/21/99

Witness list was inadvertently destroyed -

Marilyn Miller OK'd the mishap -

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **Acting Chairman SEN. RIC HOLDEN**, on March 12, 1999 at 9:07 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Steve Doherty (D)

Members Absent: None.

Staff Present: Delila Croucher, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 366; HB 227; HB 115
Executive Action: HB 227

HEARING ON HB 366

Sponsor: **REP. BETTY LOU KASTEN, HD 99, Brockway**

Proponents: **REP. DAN MCGEE, HD 21, Billings**
Jeff Simkovic, Citizen
Colleen Murphy, MT National Association of Social Workers
Linda Sheaver, MT National Association of Social Workers

Ann Gilkey, Supreme Court Assessment Program
Sami Butler, MNA
Sharon Hoff, MT Catholic Conference
Chuck Hunter, Department of Public Health and Human Services

Opponents: None

Opening Statement by Sponsor:

REP. BETTY LOU KASTEN, HD 99, Brockway, introduced HB 366. This bill was originally instituted through the Supreme Court Assessment Council and deals with Federal regulations. However it mostly concerns the safety and permanency of children that come into the care of others. It involves the parents and guardians more fully in hearings and reviews, it streamlines and clarifies the court procedures, and it expedites the termination of parental rights.
{Tape : 1; Side : A; Approx. Time Counter : 2.5 - 4}

Proponents' Testimony:

REP. DAN MCGEE, HD 21, Billings, rose in support of the bill. He chaired a Subcommittee in House Judiciary that compared HB 246 with HB 366. House Bill 366 was held as a base bill and HB 246 was merged, in line for line with full consideration by the House Judiciary Committee.
{Tape : 1; Side : A; Approx. Time Counter : 4 - 5.6}

Ann Gilkey, Supreme Court Assessment Program, rose in support of the bill. Her advisory Committee asked that they draft this bill and find a sponsor. Implementation of the Adoption and Safe Families Act requires states to incorporate various parts of that act into state statute. She pointed out some of the places in the bill where HB 246 were welded into the bill. Number one, the definition of child abuse. Number two, physical abuse was clarified as intentional acts. Number three, psychological abuse was changed to include acts or emissions. Number four, social workers must be educated or trained, not receiving education or training. Number five, unfounded was defined. Number six, youth in aided care was defined. Number seven, department records will be provided free of charge to parents. Number eight, the duties of guardian ad litem was clarified. Number nine, it was clarified that an affidavit must be filed with an abuse or neglect petition. Number ten, *show-cause* hearing was replaced with *emergency placement* hearing. Finally, the bill outlines the requirements of a treatment plan. The bill is truly a compromise. **EXHIBIT(1)**
{Tape : 1; Side : A; Approx. Time Counter : 5.6 - 11.6}

Jeff Simkovic, Attorney, Billings, rose in support of the bill. He has represented families harmed by Family Protective Services. Some of the cases could have been prevented if this bill were in place. There is a need to protect children, and a need for this role in the government. However, there is a problem with the way current law is being implemented. Child Protective Services picks on poor and disenfranchised people. Families are broken up for days, weeks, or even months at a time due to hear-say. Due process is not being granted. Parents are treated guilty until proven innocent. Social workers are often obnoxious and outrageous in their comments to parents. Child Protective Services has an issue of secondary gain. Federal, or maybe even state, grants are awarded by the number of children served. The removal of children without due process should not be tolerated. **EXHIBIT(2)**
{Tape : 1; Side : A; Approx. Time Counter : 11.6 - 15}

Sharon Hoff, Montana Catholic Conference, rose in support of the bill. The Conference is especially pleased with the efforts this bill makes to deal with women who are incarcerated and could lose access to their children.
{Tape : 1; Side : A; Approx. Time Counter : 15 - 15.6}

Colleen Murphy, Executive Director of the Montana National Chapter of Social Workers, rose in support of the bill. This law brings state statute into compliance with the 1997 Adoption and Safe families Act. This act clarifies that the health and the safety of children, served by Child and Welfare Agencies, must be their paramount concern. Agencies must aim to move foster care children more swiftly into permanent homes. This bill will shorten the time frame for a child's first permanency hearing.
{Tape : 1; Side : A; Approx. Time Counter : 15.6 - 19.8}

Sami Butler, Montana Nurses Association, rose in support of the bill. The intent of the bill is child protection and family reunification, when that course is in the best interest of the child. The bill recognizes that a stable home is best for a child and provides for, when needed, either termination of parental care or long-term custody-permanent foster care.
{Tape : 1; Side : A; Approx. Time Counter : 19.8 - 20.5}

Chuck Hunter, Administrator of the Child and Family Services Division of the Department of Public Health and Human Services, rose in support of the bill. Compliance with the Federal Adoption and Safe Families Act is an important aspect of the bill. Federal monies that accompany compliance are an important component of the bill as well. Emotional issues that the bill addresses are also important. Clarification of disclosure issues are addressed within the bill. It allows copies of records to

parents free of charge. The bill provides notice to parents, foster parents, pre-adoptive parents and relatives providing care to a child. It shortens the time frame for a hearing of a child in state care down to ten days. These are important provisions provided by this bill in addressing child care issues.
{Tape : 1; Side : A; Approx. Time Counter : 20.5 - 23.3}

John Larson, District Judge in Missoula and Mineral Counties, 4th Judicial District, rose in support of the bill. He has been a member of the Court Assessment Committee since its development. Child abuse and neglect cases will not end with the passage of this bill. There is a huge epidemic of substance abuse that prevails in our society and in this state. That abuse is what is causing this caseload to increase. There are children in his court that have been there for up to fifteen years, one of which has been moved around 34 times. Permanency planning is a difficult process and shortening the time line will be a great help though it will not be a cure all. EXHIBIT(3)
{Tape : 1; Side : A; Approx. Time Counter : 23.3 - Tape : 1; Side : B; Approx. Time Counter : 1.8}

Opponents' Testimony: none

Questions from Committee Members and Responses:

SEN. SUE BARTLETT noticed that when interviewing a child, it requires the consent of the child to have a parent or someone from the school present. She questioned the rational of putting a child in that position. **Ann Gilkey** responded saying that that provision was discussed at great length in Sub-Committee and the way the amendment reads, a social worker, county attorney, or peace officer, when considered necessary may conduct an interview of the child, period. With the child's consent, the interview may be conducted in the presence of a parent. **SEN. BARTLETT** followed up asking if it is predicted that the child will be asked, in each instance, if they want someone present. **Anne Gilkey** responded by saying she does not know how it will work out in practice but some children, if thought necessary by a social worker, will be taken into consideration.
{Tape : 1; Side : B; Approx. Time Counter : 2.3 - 5.4}

SEN. HALLIGAN asked Chuck Hunter to respond to allegations that the Department is mining children, wanting to put them in foster care for financial benefits to the Department. He inquired how reimbursements are allocated to the Department. **Mr. Hunter** responded by saying that they are able to access Federal money, between $15 and $20 million dollars per year projected into the next biennium. Those funds are available to those kids that are

in care who meet the Federal definition. There is no incentive and no bonus for kids coming into foster care. That money is just there to help pay for them. Roughly 50% of the kids in foster care are not qualified for Federal monies. The one exception is that the Feds have set targets for the number of adoptions in the state, and if the state exceeds that target, there is an incentive of about $4,000 per adoption. Montana targets are set at 200 adoptions a year. The state may receive some $30,000 to $40,000 each year of the next biennium if targets are met.

SEN. HALLIGAN asked about the insertion of the County Commissioners and why that is appropriate. **Mr. Hunter** was concerned initially whether or not that would politicize the process but the more he learned about it, the better he felt.

SEN. HALLIGAN asked REP. KASTEN if there was a guardian ad litem being involved. **REP. KASTEN** indicated no. **SEN. HALLIGAN** asked the same question to Judge Larson. The Judge indicated that he would support such involvement. **SEN. HALLIGAN** furthered his questions asking Mr. Hunter if there was someone from the Department looking into this. **Mr. Hunter** said that the only concern they would have, having very briefly reviewed the amendments, would be a broader array of people to come in and file a petition.

Closing by Sponsor:

REP. BETTY LOU KASTEN closed on her bill. She hopes that this Committee will deal with the amendments like the House dealt with them, bringing together the parties and finding a solution. Permanency in an expedient time frame for the courts is right where she needs to go with the budget she has to work with in the Health and Human Services Appropriation Sub-Committee. She recommends a do pass with or without the amendments once everyone is happy.
{Tape : 1; Side : B; Approx. Time Counter : 5.4 - 13.8}

HEARING ON HB 227

Sponsor: Rep. Brad Molnar, HD 22, Laurel

Proponents: None

Opponents: None

EXHIBIT 1
DATE 3-12-99
HB 366

Senate Judiciary
Testimony in support of HB 366
Submitted by Ann Gilkey
Supreme Court, Court Assessment Program
March 12, 1999

Among other provisions, HB 366 implements the federal Adoption and Safe Families Act of 1997 (ASFA). ASFA was passed by Congress with strong bipartisan support in recognition of a need to correct some problems with the current state and federal child protective services statutes, policies and procedures. Congress was alarmed at the number of abused and neglected children who were growing up in foster care. They were also concerned that parents were, in some cases, being given too many chances to correct serious problems leading to the removal of their children. At some point, continuing efforts to reunify a family becomes unreasonable. In conjunction with this Congress wanted laws related to child protective services to focus on the child's safety and placement in a safe, permanent home as quickly as possible. HB 366's incorporation of ASFA imposes stricter requirements on all players, including: the judges, who must make specific findings at various stages of the proceedings and hold hearings within specific time frames; the agency, which must document and convince the court that reasonable efforts have been made to prevent the removal of the child or reunify the child with the family; and the parents, who must act quickly to resolve the serious problems resulting in removal of their child, or risk termination of their parental rights.

To address the concern of children growing up in foster care, the Act allows states to expedite termination of parental rights if the parents have committed an act so outrageous that efforts to prevent removal of the child would be unreasonable. Some of the criteria in HB 366 which could arise to expedited proceedings include a judicial finding that the child has been abandoned or tortured; the parent has killed or committed felony assault of another child; the parental rights of the parent to another child has been involuntarily terminated; or an unknown father has no substantial relationship with this child for an extended period of time.

HB 366 incorporates Congress's interest in judges having good information to assist them in making decisions about kids' futures. The bill includes the Acts' provision that foster parents be given notice of all hearings and reviews and be allowed to attend and be heard.

Some of the amendments contained in HB 366 that are not requirements of ASFA, but are important and should be noted, include the following:

- Lessens the time from 20 days to 10 days to hold a show cause hearing after an emergency removal order is issued;
- Tightens language regarding extensions of TLC (6 months and ONE extension, not to exceed 6 months); and
- Clarifies that children have constitutional rights which they are entitled to assert and expands the GAL duties to include filing motions on the child's behalf to represent their interests to the court.

I strongly urge your support of HB 366.

EXHIBIT 2
DATE 3-12-99
HB 366

Jeffrey Simkovic
HB366

ISSUES OF CONCERN

I APPRECIATE THE HONOR OF SPEAKING TO YOU TODAY REGARDING MY CONCERNS WITH THE CURRENT CHILD PROTECTIVE SERVICES LAWS.

I AM AN ATTORNEY WITH A MASTERS DEGREE IN PUBLIC HEALTH WHO RECENTLY MOVED TO MONTANA WITH MY FAMILY. I AM IN PRIVATE PRACTICE IN BILLINGS, MONTANA.

I DO NOT DISAGREE WITH A NEED TO PROTECT CHILDREN, OR A NEED FOR A GOVERNMENT ROLE THROUGH THE DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES. CHILDREN MUST BE PROTECTED. I DO HAVE A PROBLEM WITH THE WAY THE CURRENT LAW IS BEING IMPLEMENTED. SOMETHINGS ARE VERY WRONG.

IN A NUTSHELL, IT APPEARS TO ME THAT CHILD PROTECTIVE SERVICES PICKS ON POOR AND DISENFRANCHISED PEOPLE. THROUGH THE USE OF HEARSAY AND CONFIDENTIAL INFORMANTS, FAMILIES ARE BROKEN UP FOR DAYS, WEEKS OR EVEN MONTHS WITHOUT DUE PROCESS. THE PARENTS ARE CONSIDERED GUILTY UNTIL PROVEN INNOCENT.

THE METHODS EMPLOYED BY CHILD PROTECTIVE SERVICES IN BILLINGS ARE REMINISCENT OF THE SPANISH INQUISITION, WHERE YOU MUST FIRST CONFESS (THAT YOU ARE A BAD PARENT) IN ORDER TO ACHIEVE SALVATION(RETURN OF THE CHILDREN TO THE FAMILY FROM FOSTER CARE). SHORT SHRIFT IS MADE OF THE DAMAGE DONE TO YOUNG CHILDREN AND THEIR FAMILIES WHEN THEY ARE WRONGFULLY REMOVED, YET THE CHILDREN ARE OFTEN REMOVED FROM FAMILIES WITHOUT CREDIBLE EVIDENCE.

MAKING MATTERS WORSE IS THE AGGRESSIVE, HOLIER THAN THOUGH ATTITUDE OF CHILD PROTECTIVE SERVICES STAFF. CHILDREN ARE FORCIBLY REMOVED FROM THEIR FAMILIES WITHOUT DUE PROCESS, FOR A VARIETY O FREASONS, MANY OF WHICH HAVE NO BASIS IN FACT. SOCIAL WORKERS ARE OFTEN OBNOXIOUS AND OUTRAGEOUS IN THEIR COMMENTS TO PARENTS.

I BELIEVE CHILD PROTECTIVE SERVICES HAS AN ISSUE OF SECONDARY GAIN, WHEREIN THEY ARE PAID ADDITONAL SUMS FOR EACH CHILD PLACED IN FOSTER CARE. I BELIEVE THAT THE BEHAVIOUR OF CHILD PROTECTIVE SERVICES WOULD NOT BE TOLERATED IN MOST OTHER STATES AND SHOULD NOT BE TOLERATED IN A DEMOCRACY.

I URGE THE LEGISLATURE ADOPT STRICT STANDARDS OF DUE PROCESS BEFORE A CHILD IS FORCIBLY REMOVED FROM ITS HOME.

EXHIBIT 3
DATE 3-12-99
HB 366

AMENDMENTS TO H.B. 366

P. 14, line 14
Following: "(c)",
Insert: appointment of a guardian pursuant to [Section 20]
Renumber subsequent subsections:

P. 30, following line 19,
Insert: NEW SECTION. Section 20. **Non-subsidized guardianships in abuse and neglect cases.**

(1) The Court may, upon the petition of any of the persons listed in subsection (2) enter an order appointing a guardian for a child concerning whom a petition has been filed pursuant to 41-3-401 or who has been placed in the temporary or permanent custody of the department pursuant to 41-3-406, 41-3-412, or 41-3-607.

(2) A guardianship proceeding, pursuant to this section, is commenced in the district court in the county in which the child resides or is found and may be filed by a the department, a guardian ad litem or a person who has established a child-parent relationship with the child.

(3) The court may award a guardianship under this section when it is shown by clear and convincing evidence that:

(a) The natural parent has engaged in conduct that is contrary to the child-parent relationship; and

(b) The nonparent has established with the child a child-parent relationship, as defined in subsection (6), and it is in the best interests of the child to continue that relationship.

(4) For purposes of an award of visitation rights under this section, a court may order visitation based on the best interests of the child.

(5) For purposes of this section, voluntarily permitting a child to remain continuously in the care of others for a significant period of time so that the others stand in loco parents to the child is conduct that is contrary to the parent-child relationship.

(6) For purposes of subsection (4)(b), "child-parent relationship" means a relationship that exists or did exist, in whole or in part, within the 12 months preceding the filing of an action under this section, in which a person provides or provided for the physical needs of a child by supplying food, shelter, and clothing and provides or provided for the physical needs of a child by supplying food, shelter, and clothing and provides or provided the child with necessary care, education, and discipline and which relationship continues or existed on a day-to-day basis through interaction, companionship, interplay, and mutuality that fulfill the child's psychological needs for a parent as well as the child's physical needs."

Insert: NEW SECTION. Section 21. **Rights of Parents and Children -- Policy -- Findings.**

(1) It is the policy of the state of Montana:

(a) to recognize the constitutionally protected rights of parents and the integrity of the family unit;

(b) to recognize a child's constitutionally protected rights, including all fundamental rights unless those rights are specifically precluded by laws that enhance their protection; and

(c) to ensure that the best interests of the child are met in parenting and child abuse and neglect proceedings;

(2) The legislature finds:

(a) that while it is in the best interests of the child to maintain a relationship with a natural parent, a natural parent's inchoate interest in the child requires constitutional protection only when the parent has demonstrated a timely commitment to the responsibilities of parenthood; and

(b) that a parent's constitutionally protected interest in the parental control of a child should yield to the best interests of the child when the parent's conduct is contrary to the child-parent relationship.

Renumber subsequent sections.

MONTANA SENATE
1999 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL

DATE 3-12-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. SUE BARTLETT	X		
SEN. STEVE DOHERTY			X
SEN. DUANE GRIMES	X		
SEN. MIKE HALLIGAN	X		
SEN. RIC HOLDEN	X		
SEN. REINY JABS	X		
SEN. WALT MC NUTT	X		
SEN. AL BISHOP,VICE CHAIRMAN	X		
SEN. LORENTS GROSFIELD, CHAIRMAN	X		

DATE 3-12-99

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 115 HB 227 HB 366

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Jeff Simkovic	248-7000	SELF+CLIENTS	HB 366	✓	
Colleen Murphy	446-6008	MT National Ass. of Social Workers	366	✓	
Linda Shearer	752-2135	MT National Association of Social Workers	366	✓	
Mike Grayson	563-4020	Anaconda - Deer Lodge County	HB 115	✓ w/ Amends	
Ann Gilkey	442-9497	Supt of Public Schools Prog.	HB 366	X	
Sami Barker	Helena	MNA	HB 366	X	
Diana Leibinger-Koch	444-9593	DOC	115	✓	
Sharon Hoff	442-5761	MT Catholic Conf	366	✓	
Dennis Taylor-Ross	256-2820	Yellowstone Co	HB 115		✓
CHUCK HUNTER		D.P.H.H.S.	HB366	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY